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DEPARTMENT OF JUSTICE



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December 26, 2018

Christopher Schiano
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Via Email

RE: Your Recent Public Records Act Request (DOJ PRA No. 2018-02422)

Dear Mr. Schiano:

This letter is in response to your recent correspondence, which was received by the California Department of Justice (DOJ) on December 7, 2018, in which you sought records pursuant to the Public Records Act (PRA) as set forth in Government Code section 6250 et seq.

Specifically, you requested the following records: "Any email sent or received by any employee of your agency between November 24, 2018 and November 27, 2018 which includes the keywords 'tear gas' and/or 'teargas'."

On December 17, 2018, we sent you a letter extending our time to respond to this request.

Please be advised that, given the nature of your request, it is likely that, to the extent they exist, many of the records responsive to it are exempt from disclosure in whole or in part under the deliberative process exemption, the investigative records exemption, the attorney work-product privilege exemption, and/or the attorney-client privilege exemption. The following is an explanation of why such materials would be exempt pursuant to those privileges:

Deliberative Process Exemption: The deliberative process privilege exempts from disclosure materials that would expose an agency's decision making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions. Even if the content of a document is purely factual, it is nonetheless exempt from public scrutiny if it is actually related to the process by which policies are formulated or, if it is inextricably intertwined with policymaking processes. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.) Records that reveal deliberative processes are protected through application of Government Code section 6255.

Attorney Work-Product and Attorney-Client Privilege Exemption: Confidentiality privileges set forth elsewhere in law, including the attorney-client privilege contained in Evidence Code section 954 (which protects confidential communications between the attorney and the client) and the attorney work-product privilege contained in Code of Civil Procedure section 2018.030 (which protects any writing reflecting an attorney's impressions, conclusions, opinions, legal research, or legal theories that is maintained as confidential) are incorporated into the Public Records Act. (Gov. Code, § 6254, subd. (k); *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363; *County of Los Angeles v. Superior Court* (2000) 82 Cal.App.4th 819, 833.)

The attorneys in our department provide legal advice to the Attorney General and his designees and prepare confidential analyses as part of their work. Accordingly, communications between the Attorney General or his designees and the department's attorneys, and analyses prepared by those attorneys are privileged materials exempt from disclosure under the Public Records Act.

Deliberative Process Exemption: The deliberative process privilege exempts from disclosure materials that would expose an agency's decision making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions. Even if the content of a document is purely factual, it is nonetheless exempt from public scrutiny if it is actually related to the process by which policies are formulated or, if it is inextricably intertwined with policymaking processes. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.) Records that reveal deliberative processes are exempt under Government Code section 6255 when the public interest in disclosure is outweighed by the public interest in non-disclosure. (*Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 306.)

Because it will take some time to review records that may be responsive to your request for such exemptions, we plan to produce responsive, non-exempt records to you on a rolling basis. The first group of documents is attached to the e-mail transmitting this letter. We anticipate providing you with an additional update and production of documents in January 2019.

Sincerely,



JENNIFER LEE
Deputy Attorney General
Government Law Section

For XAVIER BECERRA
Attorney General

JAL:
cc: Public Records Coordinator